IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. ARBITRATION APPLICATION NO.18/06

Jitendra Sharma **Versus** UTI Bank Ltd. & Anr.

DATE OF ORDER :: 16/11/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. L.L. Gupta, for applicant

Mr. Puneet Sharma, for respondents

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Instant application has been filed u/s.11 of Arbitration and Conciliation Act, 1996 for appointment of Arbitrator.

There is no dispute that loan agreement was executed between the parties which contains Clause 11 for settlement of their disputes or difference through arbitration. Clause 11, which is relevant for present purposes, is reproduced as under:

> 11. Arbitration
>
> The Borrower and Guarantor agrees and confirms that:
>
> (a) All disputes, differences and/or claims arising out of this Agreement whether during its subsistence or thereafter shall be settled by Arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof and shall be referred to the sole Arbitration of an Arbitrator nominated by UTI Bank. It is also agreed that the said Arbitrator so appointed shall have adequate knowledge of Vehicle financing. The award given by such an

> Arbitrator shall be final and binding on all the parties to this agreement.
>
> (b) In the event of such an arbitrator to whom the matter has been so referred, dying or becoming unable to act as an Arbitrator for any reason including refusal and or resignation or becoming incapacitated due to health problems both mental and or physical or does not pass the award within a reasonable period, UTI Bank shall appoint a new person to act as arbitrator. Such a person shall be entitled to proceed with the reference from the stage at which it was left by his/her predecessor".

Applicant served a notice to the UTI Bank, despite notice served, Bank failed to appoint Arbitrator in terms of Clause 11 of agreement, hence approached this court by filing instant application.

Counsel for applicant submits that once they have failed to make appointment in terms of agreement clause of arbitration, this court is competent to make appointment of Arbitrator u/s.11(6) of the Act.

Counsel for respondents, on the other hand, submits that notice was served upon UTI Bank, but agreement in question is tripartite agreement and in absence of notice being served upon Sri Ram Investment Ltd. it cannot be considered to be a notice required under law. In absence whereof, there is no occasion for respondents to make appointment of Arbitrator.

A bare look of provisions of resolving the dispute by arbitration clearly emerges that if there is any dispute or difference arising out of the agreement in question, Arbitrator was to be nominated by UTI Bank. So far as Sri Ram Investment Ltd. is concerned, it might be working for Bank under tripartite agreement, but once Arbitrator was to be appointed for resolving the dispute by the UTI to whom notice was served, in opinion of this court, compliance of requirement of law has been made and in absence of appointment of Arbitrator by UTI Bank, this court becomes competent to make appointment in terms of Section 11(6) of the Act.

In the facts and circumstances of the case, I consider it proper to appoint Shri P.K. Bhatia, District & Sessions Judge [Retd.], B-20-(A), Shiv Marg, Bani Park, Jaipur as sole Arbitrator to whom the dispute shall be referred. The cost of arbitration and fees of Arbitrator shall be as determined by the Arbitrator.

With the above observations, the application stands disposed of. Copy of this order be sent to Shri P.K. Bhatia, District & Sessions Judge [Retd.], B-20-(A), Shiv Marg, Bani Park, Jaipur, Arbitrator forthwith and parties are directed to appear before him on 10th December, 2007 at 4.30 PM.

[AJAY RASTOGI],J.